

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

David A. Dickerson,)
Petitioner,) Civil Action No.: 2:20-cv-03177-JMC
v.)
Warden, Broad River Correctional)
Institution,)
Respondent.)

)

This matter is before the court for review of the Magistrate Judge’s Report and Recommendation (“Report”) filed December 4, 2020. (ECF No. 6.) The Report addresses David A. Dickerson’s (“Petitioner”) *pro se* Motion for Extension of Time (ECF No. 1), seeking an extension of the one-year limitations period to bring an application for a writ of habeas corpus prescribed by 28 U.S.C. § 2244(d)(1). (ECF No. 6.) In the Report, the Magistrate Judge recommends that the court deny Petitioner’s Motion, dismiss the action without prejudice, and consider Petitioner’s subsequent petition for a writ of habeas corpus. (*Id.* at 3.) For the reasons set forth below, the court **ACCEPTS** the Report (*Id.*), **DENIES WITHOUT PREJUDICE** Petitioner’s Motion for Extension of Time (ECF No. 1), and **DISMISSES WITHOUT PREJUDICE** this action.

I. RELEVANT BACKGROUND

After a careful review of the record, the court concludes that the Magistrate Judge's factual summation is accurate and incorporates it herein by reference. (*See* ECF No. 6.) The court will only reference additional facts that are pertinent to the analysis of Petitioner's claims.

On September 4, 2020, Petitioner filed a Motion for Extension of Time (ECF No. 1), requesting additional time to file his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Motion was filed without a habeas petition. (*Id.*) Petitioner subsequently initiated a separate federal action in this court by filing a proper petition for a writ of habeas corpus under 28 U.S.C. § 2254 in Civil Case No. 2:20-cv-03467-JMC-MGB. (ECF No. 6 at 2.)

The Magistrate Judge filed the instant Report on December 4, 2020, recommending that the court deny the Motion because a federal court cannot exercise jurisdiction over a motion for extension of time to file a habeas petition when the request is unaccompanied by a habeas application. (ECF No. 6 at 1.) Given that Petitioner filed a separate petition for a writ of habeas corpus in this court, the Magistrate Judge also recommended that the court dismiss this action and give appropriate consideration to Petitioner's habeas corpus petition in Civil Case No. 2:20-cv-03467-JMC-MGB. (*Id.* at 2-3.)

II. LEGAL STANDARD

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge only makes a recommendation to this court, and the recommendation has no presumptive weight. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The responsibility to make a final determination remains with the court. *Id.* at 271. As such, the court is charged with making *de novo* determinations of those portions of the Report and Recommendation to which specific objections are made. *See* 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). In the absence of specific objections to the Magistrate Judge's Report, the court is not required to give any explanation for adopting the Report. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only

satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Thus, the court may accept, reject, or modify, in whole or in part, the Magistrate Judge’s recommendation or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

III. ANALYSIS

The parties were apprised of their opportunity to file specific objections to the Report on December 4, 2020. (ECF No. 6 at 4.) Objections to the Report were due by December 18, 2020 but neither party filed an objection. (*Id.*) Since no specific objections were filed by either party and the Report does not contain clear error, the court adopts the Report herein. *See Camby*, 718 F.2d at 199; *Diamond*, 416 F.3d at 315.

IV. CONCLUSION

For the foregoing reasons, the court **ACCEPTS** the Magistrate Judge’s Report Recommendation (ECF No. 6), **DENIES WITHOUT PREJUDICE** Petitioner’s Motion for Extension of Time (ECF No. 1), and **DISMISSES WITHOUT PREJUDICE** this action.

IT IS SO ORDERED.



United States District Judge

May 14, 2021
Columbia, South Carolina